

**Town of Amherst**  
**Zoning Board of Appeals - Special Permit**

*DECISION*

**Applicant:** David W. Biddle  
P.O. Box 190, 96 Bridge Road  
Hatfield, MA 01038

**Date application filed with the Town Clerk:** July 16, 2008

**Nature of request:** Renew Special Permit, ZBA FY2006-00052, for a two-family residence and remove condition # 26, expiration after 2 years.

**Address:** 382 North Pleasant Street (Map11C, Parcel 118, R-G Zoning District)

**Legal notice:** Published on August 13 and August 20, 2008 in the Daily Hampshire Gazette and sent to abutters on August 13, 2008.

**Board members:** Tom Simpson, Jane Ashby and Albert Woodhull

**Submissions:** The petitioner submitted the following with the application:

- One (1) copy of the ZBA application filed with the Town Clerk, July 16, 2008;
- One (1) copy of the Decision and Special Permit, ZBA FY2006-00052, dated August 16, 2006;
- One (1) copy of the Management Plan stamped approved on July 27, 2006;
- One (1) copy of the Site Plan, prepared by Vreeland Design Associates stamped approved on July 27, 2006, submitted by staff;
- One (1) copy of the first and second floor plans prepared by Vreeland Design Associates stamped approved on July 27, 2006, submitted by staff;
- One (1) copy of an 11X17 site plan showing removal of one parking space stamped approved at the public meeting of September 12, 2006, submitted by staff;
- One (1) copy of a letter from Keith Hoyle, Fire Chief, dated September 8, 2006 and stamped approved at the public meeting of September 12, 2006, submitted by staff;
- One (1) of a waste removal contract and Dwelling Unit Registration form stamped approved at the public meeting of September 12, 2006, submitted by staff;
- One (1) set of 11 photographs stamped approved at the public meeting of September 28, 2006, submitted by staff;
- One (1) copy of an incident report from the Police Department, dated March 3, 2009, submitted by staff.

**Site Visit:** March 10, 2009

Thomas Simpson, Jane Ashby and Albert Woodhull met with David Biddle on the property. They observed the following:

- The three-story wood frame structure located on a heavily traveled road in close proximity to the University of Massachusetts;
- Approximately 12 vehicles parked on the premises;
- Five vehicles parked adjacent to the dwelling in the area designated to contain only four spaces;
- Fire lane signs fixed to the exterior of the house;

- Two beds in a bedroom on the first floor;
- The room designated as a living room on second floor apparently being used as a bedroom;
- The room designated as a storage room on third floor appeared to be used as a bedroom;
- The security bars installed on basement windows;
- A guardrail installed between the subject property and the property to the south;
- Two bushes installed on south side of house and the location where four bushes were required to be planted;
- Active blocking or delineation of the driveway at the front yard to prevent the parking of vehicles in the front yard;
- The location of the dumpster and associated screening.

**Public Hearing:** August 28, 2008

By way of an email communication, dated August 17, 2008, the applicant requested the continuation of the public hearing to January 18, 2009.

Mr. Simpson made a motion to continue the public hearing to January 18, 2009. Ms. Ashby seconded the motion. The Board voted unanimously to continue the public hearing to January 18, 2009.

**Public Hearing:** January 18, 2009

Prior to the public hearing date, Town Staff identified that January 18, 2009, was a Sunday. In consultation with Town Counsel, the Zoning Board of Appeals and applicant determined a new date certain to continue the public hearing. On January 18, 2009, the Chair of the Zoning Board of Appeals appeared at Town Hall to inform any members of the public that the hearing was re-scheduled to March 12, 2009. No members of the public were in attendance.

**Public Hearing:** March 12, 2009

The application was presented by David Biddle, owner of 382 North Pleasant Street. He stated the following:

- He has owned the property of 382 North Pleasant Street since 1978;
- It was a rooming house, sorority house and a fraternity until the Town decided that they were no longer going to allow a fraternity there. At the same time, other fraternity houses across the street were torn down;
- His father died in 2006 and he took all the money left to him to fix up the house and make it a two-family house;
- He has made significant improvements including separate heat and separate electric;
- The police report that accompanies the paperwork provided to the Board shows that there has been no activity in the last year.

Mr. Biddle continued to state that he allowed the Board members into the house and that he was outraged with the Board's behavior. He stated that Tom Simpson and Jane Ashby should recuse themselves from hearing this case and that he will be recommending to the Town Manager that Tom Simpson be removed from the Zoning Board of Appeals. He stated that the Board members were rifling through the belongings of his tenants and the behavior was outrageous.

Mr. Biddle concluded by stating that he is asking to the Board to remove the condition requiring the permit to expire in two years and to renew the permit for a two-family dwelling.

Mr. Simpson stated that in response to the accusations, he did not think that opening two cabinet doors qualifies as rifling through someone's personal possessions.

Mr. Simpson stated that the applicant has an existing Special Permit for a two-family dwelling which has the following conditions:

- There are no more than 4 unrelated individuals allowed in each unit;
- The rooms are to be used as designated on the approved plan from 2006;
- There are not to be more than 8 parking spaces on site;
- At least four of the spaces running parallel along the driveway are to be marked;
- There was a landscape plan approved which requires a certain number plantings be done; and
- There is a requirement that each unit be registered with the Board of Health.

Mr. Simpson stated that from the observations at the site visit and from some of the documentation, it appears that the applicant may be in violation of several of the conditions of the previous Special Permit.

Mr. Biddle stated the following:

- The parking spaces are marked; they are sometimes hard to see with snow on the ground and cars parked on the property;
- There were strawberry plants planted; two of the shrubs have been ripped out by the people who live there;
- He maintains a lease with 4 people in each apartment.

Mr. Simpson stated that from our observations, there are more people living there than is allowed and that there are rooms that are supposed to be living rooms or storage rooms that are being used as bedrooms. He added that he did not see any evidence of the plantings at the back of the house.

Mr. Biddle responded that they had been taken out by people last year and that he will have to put them somewhere else.

Ms. Ashby stated that there was no snow on the ground during the Board's site visit and that she recalled the applicant saying that the tenants were responsible for snow removal and further that the front yard had been plowed for the parking of vehicles.

Mr. Biddle stated that in the lease the tenants are responsible for snow removal. He added that the contractor had plowed the front yard and that he has since blocked the area to prevent parking.

Ms. Ashby read condition 19 from the previous permit of 2006 which states that the owner is responsible for the maintenance of the property including snow removal and asked why his lease states that it is the tenant's responsibility.

Mr. Biddle stated that he always puts that into his leases, and admitted that he wasn't aware of that condition in the permit.

Ms. Ashby confirmed that the applicant has only 4 signatures for each unit in the lease. Mr. Biddle stated that he only has four (4) tenants on the lease for each apartment. Ms. Ashby stated that there are multiple beds in multiple rooms in both apartments.

Mr. Biddle responded that the current tenants have not had any police calls and if they bring in friends to stay there, he doesn't know about it. It is their private place to live and I do not go in there unless invited. Mr. Biddle noted that in the downstairs apartment, the tenants are using the fourth bedroom as a living room; meaning that someone will be doubling up in the other rooms.

Mr. Woodhull stated that regarding the accusations towards the other two members, he felt that there was nothing done that was unreasonable and noted that he thought it would have been better to say something during the site visit.

Mr. Woodhull stated that he understands the difficulty of regulating the parking of vehicles in rental apartments. He noted in previous permits that the landlord has provided parking stickers for the vehicles of those residents. He added that he did see vehicle parking spaces in the driveway marked by buried timber or concrete in the ground.

Mr. Simpson asked what the applicant proposes to do about the misuse of the rooms. Mr. Biddle stated that he cannot be there to control how the rooms are used by the tenants. He added that he currently has good tenants in the two apartments; they haven't had police complaints or obnoxious parties. He noted that it is an improvement from its previous use as a fraternity and he wants to keep it that way.

Ms. Ashby stated that she is happy about the reduced noise and police calls and it is an improvement. However, the concern is how many people are actually residing there. She noted that there is supposed to be a sitting room where there was a bed, a headboard, dresser and other elements that indicate that someone is living there, which is in violation of the previous permit.

Mr. Simpson noted that it appeared that someone was also living in the third floor storage room. He added that the applicant doesn't seem to have control over how many people are living there.

Mr. Simpson asked if there were any members of the public would like to speak to the application. Rose Evens, from Belchertown, stated that she doesn't have knowledge of the property, but from what she hears there seems to be significant improvement in the conditions of the property.

Ms. Ashby made a motion to close the evidentiary portion of the public hearing. Mr. Woodhull seconded the motion. The Board voted unanimously to close the public hearing.

**Public Meeting:**

Mr. Simpson stated that the main thing that is troubling is the perception that the landlord has signed up eight tenants and has no other responsibilities regarding the management of the property. Mr. Simpson continued that in this case, the previous Special Permit allows a two-family dwelling use with certain conditions and it is the responsibility of the landlord to ensure that the conditions of the permit are being met.

Mr. Simpson stated that he understands that it is difficult to tell who is living in a place or who may be a guest, however, eight people is not a large number to keep track of.

Ms. Ashby stated that there were extra beds; it wasn't just extra vehicles.

Mr. Simpson added that the Special Permit requires the owner to manage the property and the tenants according to the conditions.

Mr. Woodhull asked how the Building Commissioner deals with a complaint about too many people living on a property. Ms. Weeks indicated that they first look at the number of vehicles on the property and then request an inspection of the property. Ms. Weeks stated that if there is a complaint, the conditions of a Special Permit are used for enforcement.

Mr. Simpson stated that it would be in order to prepare a letter to the Building Commissioner indicating that based upon a site visit, the Zoning Board of Appeals feels that the property is in violation of several conditions of the Special Permit. The Board agreed that they intend to prepare a letter to the Building Commissioner.

The Board spent the remainder of the public meeting discussing the conditions for granting the Special Permit.

The Board determined that they will require the applicant to implement a system where each vehicle associated with a tenant shall be provided with a parking sticker by the landlord. The Board made reference to a prior ZBA decision for 346 Lincoln Avenue, which required the same arrangement.

Based upon the evidence provided during the hearing and the observations of the site visit, The Board determined that they would not remove condition 26 of the previous permit which states that the permit shall expire in two (2) years from the date of filing with the Town Clerk.

The Board determined that, based upon an email from the Health Department, dated March 11, 2009, which indicated they do not have anything on record for the property, that a condition be included requiring the registration of each rental unit with the Health Department.

The Board determined that the previously approved landscaping plan had not been completely implemented, a condition would require that the planting plan be installed prior to June 30, 2009 and be continuously maintained.

The Board determined that several conditions of the previous Special Permit were completed and the new permit would require the continued maintenance of the improvements.

**Findings:**

Under Zoning Bylaw Section 10.38 the Board found that:

10.380 and 10.381 – The proposal is suitably located in the neighborhood in which it is proposed and is compatible with existing uses in the district. The renewal of the Special Permit allows the continued use of the building as a two-family residence and allows for improved management and enforcement of the permit conditions. The two-family residence is compatible with other multi-family houses in the neighborhood and the house is located on a heavily-traveled road.

10.382, 10.383 and 10.385 – The proposal will not constitute a nuisance due to air pollution, lights or visually offensive structures; will not be a substantial inconvenience or hazard to abutters; and reasonably protects adjoining premises. The renewal of the Special Permit allows for the improved management and enforcement regarding the number of tenants, number of parking spaces and the level of noise. The Board determined that the property is less detrimental to the neighborhood as a two family residence than its previous use a fraternity house.

10.384 and 10.387 – Adequate and appropriate facilities will be provided for the proper operation of the use and will provide convenient and safe vehicular and pedestrian movement within the site, and in relation to adjacent streets, property or improvements. The renewal of the Special Permit allows for the enforcement of the approved site plan which provides parking spaces for eight vehicles and turnaround space allowing vehicles to exit the site without backing onto North Pleasant Street.

10.386 – The proposal ensures that it is in conformance with the Parking and Sign regulations of the Bylaw because the approved site plan shows 8 parking spaces, or 4 spaces for each dwelling unit, in accordance with the Zoning Bylaw requirement that there be a minimum of 2 parking spaces on the site for each dwelling unit or a total of 4 parking spaces, at a minimum.

The permit requires the applicant to provide parking stickers to each of his tenants in order to better manage and enforce tenant only parking on the property. There are no signs proposed for this property.

10.389 – The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables, and other wastes resulting from the uses permitted or permissible on the site, and methods of drainage for surface water. The renewal of the Special Permit requires a screened dumpster, continued contractual obligation with a local hauler for removal of trash and recycling weekly and a requirement that the property be kept free of trash at all times.

10.392 – The proposal provides adequate landscaping, including screening. The approved site plan shows that the dumpster will be screened and the Special Permit requires that the applicant install and maintain the landscaping plan.

10.393 – The proposal provides protection of adjacent properties by minimizing the intrusion of lighting. A condition of the Special Permit requires that all exterior lights shall be downcast and shall not shine onto adjacent properties or streets.

10.398 – The proposal is in harmony with the general purpose and intent of this Bylaw and protects the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst. The renewal of the Special Permit allows for the clearer management of the property and enforcement of on-site parking requirements. The use of the property as a two-family dwelling is less detrimental to the neighborhood than its former use as a fraternity. The use provides additional housing within walking distance of the university and downtown.

#### **Public Meeting – Zoning Board Decision:**

Mr. Simpson made a motion to APPROVE the renewal of ZBA FY2006-00052, for a two-family residence with the conditions as modified and discussed. Ms. Ashby seconded the motion. The Board VOTED unanimously to approve the renewal of ZBA FY2006-00052, for a two-family residence with the conditions as modified and discussed and to DENY the request to remove condition 26, expiration in 2 years from filing with the Town Clerk.

Mr. Simpson made a motion to APPROVE the Board to prepare and send a letter to the Building Commissioner asking for investigation of alleged violations observed during the site visit, of the following conditions [of ZBA FY2006-00052 and the new Special Permit ZBA FY2009-00004]:

- Condition 3 – *If the residents of a dwelling unit are unrelated, as defined under the provisions of Section 12.14 of the Zoning Bylaw, then no more than four (4) individuals shall live in that apartment. The total number of unrelated people in the two dwelling units together shall not exceed eight (8);*
- Condition 4 - *Rooms shall be used as designated on the plan approved on July 27, 2006. There shall be no more than 4 bedrooms in each unit as shown on the approved plan. The total number of bedrooms in the two units shall not exceed eight (8). (See Conditions 16 and 17 below for limitations on the use of the basement bedroom.);*
- Condition 5- *There shall be no more than eight (8) designated parking spaces on site. Four of the parking spaces shall be parallel spaces, of standard size (9' x 18'), located along the south side of the driveway. Four of the parking spaces shall be perpendicular spaces, of compact size (8' x 16'), located in a parking lot on the west side of the house.*

Ms. Ashby seconded the motion. The Board VOTED unanimously to prepare and send a letter to the Building Commissioner as discussed.

For all the reasons above, the Board VOTED unanimously to grant Special Permit, ZBA FY2009-00004, for the renewal of ZBA FY2006-00052, for a two family residence, under Section 10.33 of the Zoning Bylaw and to DENY the request to remove condition 26, at 382 North Pleasant Street (Map 11C, Parcel 118, R-G Zoning District), as applied for by David Biddle, subject to the conditions as modified and discussed.

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THOMAS SIMPSON

\_\_\_\_\_  
JANE ASHBY

\_\_\_\_\_  
ALBERT WOODHULL

FILED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2009 at \_\_\_\_\_,  
in the office of the Amherst Town Clerk \_\_\_\_\_.  
TWENTY-DAY APPEAL period expires, \_\_\_\_\_ 2009.  
NOTICE OF DECISION mailed this \_\_\_\_\_ day of \_\_\_\_\_, 2009  
to the attached list of addresses by \_\_\_\_\_, for the Board.  
NOTICE OF PERMIT or Variance filed this \_\_\_\_\_ day of \_\_\_\_\_, 2009,  
in the Hampshire County Registry of Deeds.

**Town of Amherst**  
**Zoning Board of Appeals**

*SPECIAL PERMIT*

The Amherst Zoning Board of Appeals hereby grants Special Permit, ZBA FY2009-00004, for the renewal of ZBA FY2006-00052, for a two family residence, under Section 10.33 of the Zoning Bylaw, and to deny the request for removal of condition 26, expiration in 2 years from filing with the Town Clerk, at 382 North Pleasant Street (Map 11C, Parcel 118, R-G Zoning District), as applied for by David Biddle, subject to the following conditions:

1. The building renovations and site improvements shall be built in accordance with the plans approved by the Board on July 27, 2006;
2. The property shall be managed in accordance with the Management Plan, as revised, approved by the Board on July 27, 2006;
3. If the residents of a dwelling unit are unrelated, as defined under the provisions of Section 12.14 of the Zoning Bylaw, then no more than four (4) individuals shall live in that apartment. The total number of unrelated people in the two dwelling units together shall not exceed eight (8);
4. Rooms shall be used as designated on the plan approved on July 27, 2006. There shall be no more than 4 bedrooms in each unit as shown on the approved plan. The total number of bedrooms in the two units shall not exceed eight (8).
5. There shall be no more than eight (8) designated parking spaces on site. Four of the parking spaces shall be parallel spaces, of standard size (9' x 18'), located along the south side of the driveway. Four of the parking spaces shall be perpendicular spaces, of compact size (8' x 16'), located in a parking lot on the west side of the house;
6. The four (4) proposed parallel parking spaces along the driveway shall be marked with timbers or concrete wheel stops, mounted flush with the ground surface and anchored into the ground with appropriate anchoring devices to mark the limits of the 4 parallel parking spaces;
7. The applicant shall establish a system to provide parking permits for all vehicles associated with the tenants. The intention of this permit is to better identify the vehicles parked on the premises and ensure that non-residents are not parking their vehicles on the property. This parking permit system must be presented to the Zoning Board of Appeals for review and approval at a public meeting prior to June 30, 2009;
8. The driveway, specifically the area adjacent to the dwelling, shall be posted and be maintained as a Fire Lane;
9. No overnight parking shall be permitted on site except in designated parking spaces;
10. No unregistered vehicles shall be parked on site, and no inoperable vehicles shall be parked on-site for a period to exceed two (2) weeks;
11. The guardrail, as installed, shown on the plan approved on July 27, 2006 and the photographs approved at the public meeting of September 28, 2006, shall be continually maintained;
12. The dumpster shall be maintained as shown on the plan approved on July 27, 2006, and shall remain screened on the west and south sides by a solid fence approximately 6 or 7 feet high as shown on the photographs approved during the public meeting of September 28, 2006;
13. The owner shall contract with a trash and recycling contractor for removal of household trash and recycling on a weekly basis and the contract shall be submitted to the Zoning Board of Appeals;
14. The property shall be maintained in a trash-free condition;
15. No furniture of any kind or grills shall be allowed in the front yard, on the roof or on the fire escape;



16. The kitchen in each apartment shall be equipped with the appliances shown on the floor plans approved by the Board on July 27, 2006;
17. The owner shall be responsible for all exterior maintenance, including plowing and shoveling of snow, mowing of the lawn, maintenance of the landscape, raking of leaves, maintenance of the exterior of the building and maintenance of the driveway and parking areas in good repair, free of ruts and washouts;
18. The owner's name, address and phone number shall be placed on file with the Building Commissioner, Health Department, Police Department and Fire Department;
19. The two apartments shall be registered with the Health Department's Rental Registry. Proof of registration shall be submitted to the Planning Department for filing with the Zoning Board of Appeals;
20. The landscape plan approved by the Zoning Board of Appeals dated September 12, 2006, shall be installed prior to June 30, 2009, and thereafter permanently maintained;
21. Exterior lighting shall be downcast and shall not shine onto adjacent properties or streets;
22. The street address shall be displayed in a manner that the Fire Department deems appropriate and shall be able to be seen from both directions on North Pleasant Street;
23. Each apartment shall be properly identified with a unit or apartment number or letter;
24. Audible sound emanating from the property or house shall not exceed ambient noise levels at the property line;
25. The owner shall be responsible for informing all tenants of the conditions of this Special Permit;
26. This permit shall expire in 2 years from the date of filing with the Town Clerk;
27. Upon change of ownership, the new owner shall submit a Management Plan to the Zoning Board of Appeals for review and approval at a public meeting.

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THOMAS SIMPSON, Chair  
Amherst Zoning Board of Appeals

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DATE